APPELLATE COURT

OF THE

STATE OF CONNECTICUT

AC 42061
AC 42062

STATE

Appellee

vs.

WILLIAM HYDE BRADLEY

Defendant-Appellant.

BRIEF OF DEFENDANT- APPELLANT

WITH SEPARATELY BOUND APPENDIX

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STATEMENT OF ISSUE

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State v. Menditto, 315 Conn. 861, 110 A.3d 410 (2015).....27-28

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State v. Davis, 76 Conn. App. 653, 820 A.2d 1122 (2003).....3

Vieth v. Jubelirer, 541 U.S. 267 (2004).....26

Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252 (1975).....21

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Secondary Sources

Clint Werner, Marijuana Gateway to Health (2011).....11

Cupples, Upham & Company,
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Cydney Adams, The man behind the marijuana ban for all the wrong reasons,
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Eric Schlosser, Reefer Madness, THE ATLANTIC (Aug. 1994).....9,12

Jack Herer, The Emperor Wears No Clothes, (11th ed. 2015).....6

John Hudak, Marijuana: A Short History (2016).....10, 11

John E. Nowak & Ronald D. Rotunda, Constitutional Law, §14.4, 628 (5th ed. 1995).....26

Leslie Iversen, The Science of Marijuana (2000).....5

Martin Booth, Cannabis: A History (2003).....7

Matt Thompson, The Mysterious History Of 'Marijuana', NPR (July 22, 2013).....12

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I. FACTS AND PROCEDURAL HISTORY

On or about January 13, 2017, Mr. William Bradley was arrested and charged with Sale of a Controlled Substance, in violation of C.G.S. §21a-277(b)[1] and Illegal Possession, in violation C.G.S. §21-279(b).[2] State v. Bradley, Docket No. M09M-CR17-0210994-S. Additionally, Mr. Bradley was charged with a Violation of Probation, in violation of C.G.S. §53a-32. State v. Bradley, Docket No. MMX -CR14-0204977-T. The violation of probation emanated from a previous conviction for Possession with Intent to Sell, in violation of C.G.S. §21a-277(b), for which Mr. Bradley pled *nolo contendere*. All the charges were based on Mr. Bradley's possession of cannabis.

On or about April 25, 2017, Mr. Bradley moved to dismiss these three charges on the grounds that (1) Connecticut's criminalization of the possession and sale of marijuana is unconstitutional because it is based in a racially discriminatory purpose; and (2) such laws

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[1] (1) No person may manufacture, distribute, sell, prescribe, dispense, compound, transport with the intent to sell or dispense, possess with the intent to sell or dispense, offer, give or administer to another person, except as authorized in this chapter or chapter 420f, any controlled substance other than a (A) narcotic substance, or (B) hallucinogenic substance. (2) Any person who violates subdivision (1) of this subsection (A) for a first offense, may be fined not more than twenty-five thousand dollars or imprisoned not more than seven years, or be both fined and imprisoned, and (B) for any subsequent offense, may be fined not more than one hundred thousand dollars or imprisoned not more than fifteen years, or be both fined and imprisoned. C.G.S. §21a-277(b).

[2] Any person who violates subsection (a) of this section in or on, or within one thousand five hundred feet of, the real property comprising a public or private elementary or secondary school and who is not enrolled as a student in such school or a licensed child care center, as defined in section 19a-77, that is identified as a child care center by a sign posted in a conspicuous place shall be guilty of a class A misdemeanor and shall be sentenced to a term of imprisonment and a period of probation during which such person shall perform community service as a condition of such probation, in a manner ordered by the court. C.G.S. §21-279(b).

have been "superseded" by federal law, which now permits the possession and sale of marijuana. On or about September 8, 2017, Mr. Bradley filed an amended Memorandum of Law in support of his Motion to Dismiss. On or about September 25, 2017, the State filed its Objection to the Motion to Dismiss. On or about November 1, 2017, Mr. Bradley replied to the same.

On or about November 15, 2017, a hearing on Mr. Bradley's Motion to Dismiss was held before the court (Keegan, J.). At the hearing, Professor Jon Gettman, Ph. D. testified on behalf of the defense. Professor Gettman presented his research and analysis regarding the racially disproportionate arrest rates for marijuana offenses throughout Connecticut. On or about December 27, 2017, the Court (Keegan, J.) ordered both parties to file briefs regarding the issue of: "Whether the defendant has standing to raise an equal protection claim based on alleged discrimination against African Americans, when the defendant is not a member of that class." On or about January 26, 2018, Mr. Bradley and the State filed their respective briefs, with Mr. Bradley arguing that he had standing as a defendant facing prosecution under an unconstitutional statute, and the State arguing that as Mr. Bradley is not African American, he lacked standing. On or about February 7, 2018, the court (Keegan, J.) heard argument on the question of standing.

On or about June 1, 2018, the court (Keegan, J.) issued its decision holding that Mr. Bradley did in fact have standing to raise the claim that marijuana prohibition is unconstitutional as it is based in a racially discriminatory purpose, and that Mr. Bradley had not waived any of his claims, but denied the Motion to Dismiss on the merits. State v. Bradley, No. MMXCR140204977T, 2018 Conn. Super. LEXIS 1135 (Conn. Super. Ct. June 1, 2018).

On or about June 11, 2018, Mr. Bradley filed Motions for Reconsideration, directing the

court to the documented link between the Federal Uniform Narcotic Drug Act and its adoption by the State. On or about June 13, 2018, the court (Keegan, J.) denied the Motions for Reconsideration.

On or about August 28, 2018, in Docket No. M09M-CR17-0210994-S, Mr. Bradley plead *nolo contendere* to the charge of Sale of a Controlled Substance, in violation of C.G.S. §21a-277(b), and was sentenced to an unconditional discharge. On or about August 28, 2018, in Docket No. MMX-CR14-0204977-T, Mr. Bradley plead *nolo contendere* to a violation of probation and was sentenced to sixty-six (66) months jail, execution suspended, probation two (2) years.

On or about September 6, 2018, Mr. Bradley timely filed appeals in both matters, which were consolidated. Mr. Bradley now appeals the court's denial of his Motion to Dismiss, specifically the trial court's finding that the prohibition against cannabis is not unconstitutionally based in racially discriminatory purpose.

II. ARGUMENT

A. Standard of Review

The appropriate standard of review is de novo.

> "Our standard of review of a trial court's...conclusions of law in connection with a motion to dismiss is well settled...Where the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts...Thus, our review of the trial court's ultimate legal conclusion and resulting [denial] of the motion to dismiss will be de novo." (Internal citations and quotations omitted) State v. Davis, 76 Conn. App. 653, 669 (2003).

B. Cannabis Prohibition is Unconstitutional as it is Based in a Racially Discriminatory Purpose in Violation of the Equal Protection Clause

It is axiomatic that: "The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race. It is also true that the Due Process Clause of the Fifth Amendment contains an equal protection component prohibiting the United States from invidiously discriminating between individuals or groups." Wash. v. Davis, 426 U.S. 229, 239 (1976). "...for the Equal Protection Clause to be violated, the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose." (Internal citations and quotations omitted) Rogers v. Lodge, 458 U.S. 613, 617 (1982). This means that "..the decisionmaker...selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." (Internal citations and quotations omitted) McCleskey v. Kemp, 481 U.S. 279, 298 (1987). "Once racial discrimination is shown to have been a 'substantial' or 'motivating' factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor." Hunter v. Underwood, 471 U.S. 222, 228 (1985).

In denying Mr. Bradley's Motion to Dismiss, the court (Keegan, J.) found that: "Even assuming that the defendant has shown via Dr. Gettman's report and testimony that Connecticut's criminalization of marijuana has disparately impacted African Americans, the defendant has nonetheless failed to establish discriminatory intent." State v. Bradley, at *16. As the Fourth Circuit posited under analogous circumstances, however: "In holding that the legislature did not enact the challenged provisions with discriminatory intent, the court seems to have missed the forest in carefully surveying the many trees." N.C. State Conf. of the

NAACP v. McCrory, 831 F.3d 204, 214 (4th Cir. 2016).

In his Motion to Dismiss and accompanying Memorandum of Law, Mr. Bradley detailed the well documented history of cannabis cultivation and use, entirely unregulated, from 10,000 B.C.E. until the Common Era,[3] an abbreviated version of which Mr. Bradley recites herein: The first documented use of cannabis took place in the area of modern day Taiwan, where hemp cords were identified in pottery found in an ancient village dating back to about 10,000 years ago.[4] The use of cannabis as a medicinal substance continued to spread throughout Asia and Europe for centuries. By way of example, *The Venidad*, a Persian text dating back to 700 B.C.E., cited cannabis as being one of the most significant of 10,000 medicinal plants.[5]

Britain became the "industrial goliath of Western Europe" primarily due to its exploitation of hemp for the manufacture of, among other things, rope and sail-commodities that were essential to its large merchant and naval fleet. Deitch, at 11-12. In 1533, King Henry VIII imposed a law *mandating* that farmers grow hemp. Id. at 12. Three decades after King Henry VIII's law mandating the cultivation of hemp, Queen Elizabeth I increased the mandated quota imposed on farmers growing hemp and increased the penalties for failing to meet the quota. Id. Britain's reliance on cannabis was not limited to its navy-related needs; Britain's economy had also become largely driven by its production of hemp-based domestic goods such as

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[3]See Robert Deitch, Hemp - American History Revisited: The Plant with a Divided History 1, 7-8 (2003); Leslie Iversen, The Science of Marijuana 122 (2000).

[4]Deitch, supra. at 7-8; I0,000-year History of Marijuana use in the World, Advanced Holistic Health, http://www.advancedholistichealth.org/history.html (last visited July 20, 20 17) [hereinafter referred to as "Advanced Holistic Health"].

[5]Rob Streisfeld, NMD, The Role of the EndoCannabinoid System & Cannabinoids Linked to Gut Health, NYANP 13, http://www.nyanp.org/wp-content/uploads/2015/10/Streisfeld_ Cannabis-F-NYANP.pdf (last visited May 10, 2017)

fabrics and cordage. Id. at 14.

By the 17th Century, Britain began colonizing much of the world, and the Americas in particular. Britain's colonization project was built, in part, upon its cultivation, distribution and use of hemp; however, Britain began to exhaust its geographic agricultural resources to produce adequate amounts of hemp.[6] England's need for hemp was so substantial that, in 1611, after its establishment of the Jamestown Colony in the Americas, England gave direct orders to the colonists to grow hemp for the production of rope, sails, and clothing.[7] "In 1619, America's first marijuana law was enacted at Jamestown Colony, Virginia, 'ordering' all farmers to 'make tryal of' (grow) Indian hempseed. More mandatory (must-grow) hemp cultivation laws were enacted in Massachusetts in 1631, in Connecticut in 1632 and in the Chesapeake Colonies into the mid-1700s."[8] This was due to the prolific industrial use of hemp. The value of hemp was so well-recognized in the Americas during the colonial period that it was frequently used as a barter medium, and farmers were permitted to pay part of their taxes using the plant in the colonies of Virginia (1682), Maryland (1683), and Pennsylvania (1706). Deitch, at 19.

As early as 1840, studies regarding the medical uses of cannabis appeared in American

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[6]Deitch, supra. at 12. "The fundamental reason for America's predominately Protestant British heritage is that Britain encouraged its people to colonize America- and they did that primarily because Britain's domestic hemp-based industry, the lifeblood of the economy, desperately needed a stable, reliable, and relatively cheap source of raw hemp." Id. at 13

[7]Id. at 14; Marijuana Timeline, PBS, http://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html (last visited May I 0, 2017) [hereinafter referred to as "PBS"].

[8] Jack Herer, *The Emperor Wears No Clothes*, Chapter 1 (11th ed. 2015) *available at* http://jackherer.com.s216995.gridserver.com/emperor-3/chapter-1/

medical academic publications. See Steve DeAngelo, The Cannabis Manifesto: A New Paradigm for Wellness, 48, 50 (2015). By 1850, the widely-distributed *United States Pharmacopoeia,* a highly selective listing of America's most widely taken medicines, listed cannabis as a treatment for "neuralgia, tetanus, typhus, cholera, rabies, dysentery, alcoholism, and opiate addiction, anthrax, leprosy, incontinence, snake bite, gout, convulsive-inducing conditions, tonsillitis, insanity ... excessive menstrual bleeding, and uterine haemorrhaging."[9] Thereafter, the *Pharmacopeia* included cannabis, later known as "Extractum Cannabis" or "Extract of Hemp," as a treatment for additional ailments and conditions. In 1860, the Ohio State Medical Society's Committee on Cannabis Indica found Cannabis to be medically effective for ailments including stomach cramps, coughs, venereal disease, post-partum depression, epilepsy, and asthma.[10] By the latter half of the 19th century, "every pharmaceutical company [in America was] ... busy manufacturing [C]annabis-based patent cures [including] E.R. Squibb & Sons [which] marketed their own Chlorodyne and Corn Collodium; Parke, Davis, [which] turned out Utroval, Casadein and a veterinary [C]annabis colic cure; Eli Lilly [which] produced Dr[.] Brown's Sedative Tablets, Neurosine and the One Day Cough Cure, a mixture of [C]annabis and balsam which was a main competitor for another new cough cure released by the German pharmaceutical firm, Bayer." Booth, supra. at 116.

During the latter half of the 19th Century and the beginning of the 20th Century,

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[9] Martin Booth, Cannabis: A History I, 13-14 (2003); Edward M. Brecher, et al., The Consumers Union Report on Licit and Illicit Drugs, CONSUMER REPORTS MAGAZINE (1972), http://www.druglibrary.org/schaffer/Library/studies/cu/cu54.html#Anchor-35882;

[10]Booth, supra., at 114; DeAngelo, supra., at 50.

Cannabis was also commonly used to treat asthma in the United States.[11] Specifically, pharmaceutical companies began manufacturing cigarettes containing cannabis ("Legal Cannabis Cigarettes") for the purpose of treating asthma in both England and the United States. Id. Legal Cannabis Cigarettes were so highly regarded as a remedy for asthma in late 19th Century America that the *Boston Medical and Surgical Journal,* in its 1860 publication, advertised Legal Cannabis Cigarettes, which were manufactured by Grirnault & Co., as being able to "promptly" cure or relieve "Asthma, Bronchitis, Loss of Voice, and other infections of the respiratory organs."[12] Nineteenth Century Americans utilized the plant for social purposes as well.[13] A "cannabis fad" took place in the mid-1800s among intellectuals, and the open use of hashish *(i.e.,* cannabis containing a very high THC content) continued into the 20th Century.[14]

Then in 1906, The Food and Drugs Act ("FDA") was enacted, requiring the labeling of over-the-counter drugs, including, *inter alia,* cannabis.[15] When the Mexican Revolution resulted in a wave of Mexican immigrants to America's Southern border States in 1910, articles in the *New York Sun, Boston Daily Globe* and other papers decried the "evils of ganjah

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[11]Viewers' Guide to the Botany of Desire: Based on the book by Michael Pollan, Chapter 3, p. 7, PBS, https://www-tc.pbs.org/thebotanyofdesire/pdf/Botany _of_ Desire_ Viewers_ Guide.pdf (last visited June 29, 2017).

[12]Cupples, Upham & Company, Medical Journal Advertising Sheet, 83 B. MED. & SURGICAL J. 260 (1870-1871).

[13]*See* Brecher *et al. supra*, PBS *supra*; The Associated Press, As pot goes proper, a history of weed, NYDAILYNEWS (Dec. 6, 2012), http://www.nydailynews.com/news/national/pot-proper-history-weed-article-1.1214613.

[14]Brecher, *et al.,* supra.; PBS supra.; The Associated Press supra.

[15]PBS supra.; The Associated Press supra.

smoking" and suggested that some immigrants used it "to key themselves up to the point of killing." Id.

The vast majority of stories urging the public to fear the effects of "marijuana" appeared in newspapers published by William Randolph Hearst, a man who had financial interests in the lumber and paper industries, and therefore, saw the hemp industry as an obstacle to his path to economic success.[16] As a result of the hysteria created by the aforementioned and described horror stories published by pro-paper entrepreneurs, cannabis became associated with Mexican immigrants, and because there was tremendous fear and prejudice with respect to these newcomers, cannabis likewise became vilified across the country.[17]

The aforementioned and described xenophobia precipitated anti-cannabis legislation across America and States began outlawing cannabis.[18] By 1931, twenty-nine states had

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[16] History of Marijuana as Medicine, PROCON.ORG. *https://medicalmarijuana.procon.org/view.timeline.php?timelineID=000026#1900-1949(citing* Mitchell Earleywine, PhD, *Understanding Marijuana: A New Look at the Scientific Evidence* (2005). "William Randolph Hearst was an up-and-coming newspaper tycoon, owning twenty-eight newspapers by the mid-1920s ... Hearst then dropped the words Cannabis and hemp from his newspapers and began a propaganda campaign against 'marijuana,' (following in Anslinger's footsteps)." *Id.* (citation omitted).

[17] PBS supra. "The prejudices and fears that greeted these peasant immigrants also extended to their traditional means of intoxication: smoking marijuana. Police officers in Texas claimed that marijuana incited violent crimes, aroused a 'Lust for blood,' and gave its users 'superhuman strength.' Rumors spread that Mexicans were distributing this 'killer weed' to unsuspecting American schoolchildren .... In New Orleans newspaper articles associated the drug with African-Americans, jazz musicians, prostitutes, and underworld whites. 'The Marijuana Menace,' as sketched by anti-drug campaigners, was personified by inferior races and social deviants." Eric Schlosser, Reefer Madness, THE ATLANTIC (Aug. 1994), https://www.theatlantic.com/magazine/archive/1994/08/reefer-madness/303476/

[18] See The Associated Press supra.; PROCON.ORG supra.

outlawed cannabis.[19] This domino effect was largely triggered by the spread, in the 1890s, of racist and bigoted false horror stories regarding alleged marijuana-induced violence. See The Associated Press supra. This xenophobia was then exacerbated by job losses associated with the Great Depression. During that time, "massive unemployment increased public resentment and fear of Mexican immigrants, escalating public and governmental concern [regarding] the [supposed] problem [associated with] marijuana."[20]

As cannabis was used as an intoxicant primarily by Mexicans, West Indians, African Americans, and lower class whites, "the majority white population automatically associated minority racial and socio-economic groups with criminal activity, the majority immediately presumed marijuana to be addictive, dangerous, and representative of evil."[21] Even the denomination "marijuana" or "marihuana," which comes from Mexican Spanish to describe cannabis "was popularized in the United States during the 1930s by advocates of prohibition who sought to exploit prejudice against despised minority groups, especially Mexican immigrants."[22]

> The vast increase of Mexican immigrants into the Southwestern states and the fear and resentment felt toward them and their culture by whites largely drove the anti-marijuana platform. The white population "exhibited considerable distaste for the new immigrants and their different habits of life[,]" and marijuana use exhibited one such habit. This fear and dislike was extreme, placing "the Mexican ... in the same position as the Negro in the South." Thus, this country's

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[19]PBS supra.

[20]PBS supra.

[21] Thomas Moran, Student Note, Just a Little Bit of History Repeating: The California Model of Marijuana Legalization and How it Might Affect Racial and Ethnic Minorities, 17 Wash. & Lee J. Civil Rts. & Soc. Just. 557, 561 (2011).

[22]John Hudak, Marijuana: A Short History, 38 (2016).

> original and immediate disdain for marijuana was not positioned against its mental or physical effects, but towards the ones using it--minority groups.[23]

"In the years after the Mexican-American War (1846-48), as hundreds of thousands of Mexican immigrants streamed across the border, racial tensions heated up. As Americans sought a pretext to vilify this new immigrant community, they found the ideal culprit in marijuana, a more common crop south of the border and a substance used for a variety of purposes in Mexican culture at the time." "Prejudices against both blacks and Mexicans merged to ensure...regulation of marijuana...marijuana was scapegoated as prompting murder, rape, and mayhem among blacks in the South, Mexican Americans in the Southwest...with marijuana blamed for the seduction of white girls by black men and for violent crimes committed by these groups."[24] "This disparity between 'cannabis' mentions pre-1900 and 'marihuana' references post-1900 is wildly jarring. It's almost as though the papers are describing two different drugs."[25] Indeed, "The first laws against marijuana were enacted at the state level in areas with large numbers of Mexican migrant workers. The laws served a dual purpose, not only demonizing and criminalizing marijuana but also making the migrant users– for whom the plant continued to be an important part of their culture– vulnerable to prosecution by the police."[26]

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[23] Thomas Moran, Student Note, Just a Little Bit of History Repeating: The California Model of Marijuana Legalization and How it Might Affect Racial and Ethnic Minorities, 17 Wash. & Lee J. Civil Rts. & Soc. Just. 557, 562 (2011).

[24]Stephen W. Bender, Overdose: The Failure of the U.S. Drug War and Attempts at Legalization, 6 Alb. Gov't L. Rev. 359, 361-362 (2013).

[25]John Hudak, Marijuana: A Short History, 25 (2016).

[26]Clint Werner, Marijuana Gateway to Health 66 (2011).

These enactments stood in stark contrast to the findings of the medical community. According to the pharmaceutical industry, cannabis was "an insignificant medicine which had no place in antinarcotics legislation."[27] In 1910, Charles West, chairman of the National Wholesale Druggists Association's legislative committee, argued that "cannabis is not what may be called a 'habit-forming drug.'"[28]

Harry Anslinger, the first commissioner of the United States Treasury Department's Federal Bureau of Narcotics and the primary force behind cannabis prohibition, was himself driven largely by racial prejudice. Anslinger initially doubted the seriousness of the so-called "marijuana"[29] problem, but after the repeal of alcohol Prohibition in 1933, he began to push vigorously for the nationwide prohibition of cannabis, ostensibly to create new work for himself.[30] Anslinger then publicly claimed that the use of "evil weed" led to murder, sex

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[27]Id. at 48.

[28]Richard J. Bonnie and Charles H. Whitebread II, The Marihuana Conviction 49 (1974).

[29]The term "'[M]arijuana' came into popular usage in the U.S. in the early 20th century because anti-cannabis factions wanted to underscore the drug's 'Mexican-ness.' It was meant to play off of anti-immigrant sentiments." Matt Thompson, The Mysterious History Of 'Marijuana', NPR (July 22, 2013), http://www.npr.org/sections/codeswitch/2013/07/14/201981025/the-mysterious-history-of-marijuana.

[30]The Associated Press, supra.; Schlosser, supra. "Harry [Anslinger] was aware of the weakness of his new position. A war on narcotics alone - cocaine and heroin, outlawed in 1914 - wasn't enough ... they were used only by a tiny minority, and you couldn't keep an entire department alive on such small crumbs. He needed more." Cydney Adams, The man behind the marijuana ban for all the wrong reasons, CBS NEWS (Nov. 17, 2016), http://www.cbsnews.com/news/harry-anslinger-the-man-behind-the-marijuana-ban/.

crimes, and mental insanity.[31] Anslinger authored sensational articles falsely associating Cannabis with violence and death, with titles such as "Marijuana: Assassin of Youth." Id.

Anslinger also made a series of racist statements pertaining to African Americans and Cannabis, including, *inter alia:*

(a) "Reefer makes darkies think they're as good as white men;"

(b) "Marihuana influences Negroes to look at white people in the eye, step on white men's shadows, and look at a white women twice;"

(c) "Colored students at the University of Minnesota partying with (white) female students, smoking [marijuana] and getting their sympathy with stories of racial persecution. Result: pregnancy;"

(d) "There are 100,000 total marijuana smokers in the US, and most are Negroes, Hispanics, Filipinos and entertainers. Their Satanic music, jazz and swing, result from marijuana usage. This marijuana causes white women to seek sexual relations with Negroes, entertainers and any others;"

(e) "Marijuana is the most violence causing drug in the history of mankind;" and

(f) "The primary reason to outlaw marijuana is its effect on the degenerate races."[32]

"The most frightening effect of marijuana Harry [Ansligner] warned, was on blacks. It made them forget the appropriate racial barriers– and unleashed their lust for white women." Id. at 17. "Harry [Ansligner] told the public that 'the increase [in drug addiction] is practically 100 percent among Negro people," which he stressed was terrifying because already 'the Negro population...accounts for 10 percent of the total population, but 60 percent of the addicts.'" Id. at 26. According to Commissioner Anslinger, "fifty per cent of the violent crimes committed

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[31]Schlosser, supra.

[32]*AZQuotes.* Harry J. Anslinger Quotes. http://www.azquotes.com/author/23159-Harry J Anslinger

in districts occupied by Mexicans, Greeks, Turks, Filipinos, Spaniards, Latin Americans, and Negroes may be traced to the use of marihuana."[33]

Despite the issuance of a report by the American Medical Association which disputed many of Anslinger's claims, Anslinger successfully pushed through the Marihuana Tax Act of 1937 (MTA). Id. at 18. The MTA effectively outlawed cannabis by requiring physicians and pharmacists to register and report use of the plant, as well as pay an excise tax for authorized medical and industrial uses.[34]

> On the eve of the Marihuana Tax Act, there was no scientific support for a significant statistical association between marihuana use and major criminal behavior. There was little evidence of increased motor excitement attending acute intoxication, much less the release of violent tendencies. There was only anecdotal evidence generated by local law enforcement officials and a persuasive believe that the people who used marihuana, Mexicans and other ethnic minorities, represented the antisocial elements in society.[35]

In fact, Dr. William C. Woodward, a representative of the American Medical Association, specifically objected to the passage of the Marihuana Tax Act, citing the lack of scientific evidence linking marijuana and crime.

> There is nothing in the medicinal use of Cannabis that has any relation to Cannabis addiction. I use the word "Cannabis" in preference to the word

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[33] Richard J. Bonnie and Charles H. Whitebread II, The Marihuana Conviction 106 (1974).

[34]PBS, supra. "The Federal law...maintained the right to use marijuana for medicinal purposes but required physicians and pharmacists who prescribed or dispensed marijuana to register with federal authorities and pay an annual tax or license fee ... After the passage of the Act, prescriptions of marijuana declined ... " PROCON.ORG *supra. (citing* Rosalie Liccardo Pacula, PhD, *State Medical Marijuana Laws: Understanding the Laws and Their Limitations,* JOURNAL OF PUBLIC HEALTH POLICY (2002).

[35]Richard J. Bonnie and Charles H. Whitebread II, The Marihuana Conviction 151 (1974).

> "marihuana," because Cannabis is the correct term for describing the plant and its products. The term "marihuana" is a mongrel word that has crept into this country over the Mexican border and has no general meaning, except as it relates to the use of Cannabis preparations for smoking ... To say, however, as has been proposed here, that the use of the drug should be prevented by a prohibitive tax, loses sight of the fact that future investigation may show that there are substantial medical uses for Cannabis.[36]

Notwithstanding the dearth of medical and sociological evidence, the Connecticut Legislature classified, and then criminalized, marijuana in accordance with developing Federal legislation. In 1930, unlike cocaine, opium, morphine, heroin, and codeine, cannabis remained unregulated in Connecticut. See Exh. A, Defendant's Memorandum of Law in Support of Defendant's Motion to Dismiss, Appx. 123-124. Then in 1935, cannabis became regulated by the Uniform State Narcotic Drug Act, prohibiting its possession and dispensation with certain medical and academic exceptions. See Exh. B, Defendant's Memorandum of Law in Support of Defendant's Motion to Dismiss, Appx. A125-150. As evidenced by the corresponding legislative history, the regulation of cannabis in Connecticut was in response to the Federal activism of Harry Anslinger. Exh C. at 3, Defendant's Memorandum of Law in Support of Defendant's Motion to Dismiss, Appx. 151- 154. By 1939, marijuana was criminalized entirely, without exception for medicinal or research purposes. Exh. D, Defendant's Memorandum of Law in Support of Defendant's Motion to Dismiss, Appx. 155-166. The legislative testimony plainly states that the purpose of the amendment was to make Connecticut's law "conform to the federal law." Exh. E, Defendant's Memorandum of Law in Support of Defendant's Motion to Dismiss, Appx. 167.

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[36]William C. Woodward, MD, Statement to the U.S. House of Representatives Committee on Ways and Means (May 4, 1937) *available at* https://medicalmarijuana.procon.org/sourcefiles/Statement-of-Dr-William-C-Woodward.pdf

Despite this clear legislative path, the trial court declined to find that Connecticut's cannabis prohibition was based in a racially discriminatory purpose. Initially, the trial court's decision with respect to this claim is problematic, as the court conflates its apparent determination that there is "insufficient evidence" to substantiate the defendant's claim with the "inadequate briefing" of the defendant's claim. The court's decision parses out subsidiary arguments in support of the defendant's Equal Protection claim, deems them "inadequately briefed," and consequently asserts that the trial court is not required to address them. See e.g. State v. Bradley, *13, n. 7; *18, n. 9; *20, n. 12. To the contrary, as the court's Memorandum of Decision recounts:

> On April 25, 2017, the defendant moved to dismiss these three charges on the grounds that (1) Connecticut's criminalization of the possession and sale of marijuana is unconstitutional because it is based in a racially discriminatory purpose; and (2) such laws have been "superseded" by federal law, which now permits the possession and sale of marijuana. In support of these motions, the defendant filed a memorandum of law, several exhibits, including a report by Professor Jon Gettman, Ph. D., of Shenandoah University, in which he presents research and analysis of data on arrests for marijuana offenses in the state of Connecticut. On September 25, 2017, the state filed a memorandum of law in opposition to the defendant's motions to dismiss, as well as several exhibits. The defendant in turn filed a reply brief on November 1, 2017.
>
> On November 15, 2017, the court conducted a hearing on the motions. At the hearing, the court admitted Dr. Gettman's report as a full exhibit and heard testimony from Dr. Gettman indicating that there is a racial disparity in arrest rates in Connecticut for marijuana offenses. The court also heard the parties' legal arguments.
>
> Following the hearing, on December 27, 2017, the court ordered supplemental memoranda of law addressed to the issue of whether the defendant, being Caucasian, has standing to raise equal protection claims based on alleged discrimination against African Americans. The parties filed their respective memoranda on January 26, 2018, and the court then heard oral argument on the standing issue on February 7, 2018. State v. Bradley, at *2-3.

The court's decision then reiterates:

> The defendant makes two arguments with respect to the constitutionality of Connecticut's criminalization of the possession and sale of marijuana: (1) it violates federal constitutional equal protection principles because it is based in a racially discriminatory purpose; and (2) it violates the equal protection clause of the Connecticut constitution, article first, §20, as amended by articles five and twenty-one of the amendments, because it has a disparate impact on African Americans. Id., at *4.
>
> Relying on federal equal protection principles, the defendant first contends that Connecticut's criminalization of marijuana is unconstitutional because it was enacted with a racially discriminatory purpose. Id. at *12-13.
>
> The crux of this argument is the impetus for marijuana criminalization was racial prejudices toward those associated with its use– mainly Mexicans and African Americans. Id. at *13.

Thus, it is abundantly clear that the defendant's claim is that Connecticut's cannabis prohibition violates the Equal Protection clauses of State and Federal Constitution. In support of this claim, a voluminous memorandum of law with attached exhibits was filed, supplemental memoranda were filed, oral argument and an evidentiary hearing were held.

The court may well disagree with the merits of the defendant's claim, but this does not mean with the claim itself was inadequately briefed. "As a general matter, the dispositive question in determining whether a claim is adequately briefed is whether the claim is reasonably discernible [from] the record..." (Internal citations and quotations omitted) In re Elijah C., 326 Conn. 480, 495 (2017)(Finding claim was adequately briefed as "claim was sufficiently clear to permit that court to address it on the merits.") See also Elec. Contrs., Inc. v. Dep't of Educ., 303 Conn. 402, 444 (2012)("In its brief, ECI addresses the standard of review, the statutory provisions allegedly violated, the portions of the complaint containing the antitrust allegations, the manner in which the antitrust statutes were violated and the relevant legal precedent. Accordingly, we conclude that the claim was adequately briefed." Here, the

court was demonstrably aware of Mr. Bradley's equal protection claim: the statutory and constitutional provisions at issue, the legal standard to be applied, and the evidence presented in support of the same.

Substantively, the court disputes the defendant's assertion that Connecticut's cannabis prohibition was enacted in response to Anslinger's racist campaign. State v. Bradley, at *18-20. An examination of Connecticut's legislative history belies such a contention. The court maintained that there was " no evidence of Anslinger's involvement in the passage of the act..." Id. at *20. Yet, as Mr. Bradley argued, the record reveals that Connecticut criminalized cannabis in order to conform with the Federal legislation, the Uniform Narcotics Drug Act, which legislation was passed with a racially discriminatory purpose. The Mr. H. P. "Burns" who testified at the Public Health and Safety Committee against the adoption of the Uniform State Narcotic Drug Act is presumptively Hugh P. Beirne, Secretary-Treasurer of the State Board of Pharmacy Commission, appointed by the Governor.[37] Thus, when Mr. Beirne testified that: "I do not agree with this bill in one way because it is practically a repetition of the Narcotic Law know [sic] as the Harrison Act. I do disagree with the part regarding the penalty. We do now operate under a uniform act. This was an attempt on the part of Harry Anslinger of Washington to register throughout the country but at any specific violation of narcotic law will

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[37] Mr. Beirne is referred to in the transcript as "Mr. Burns" and there is a subsequent reference to "Representative Burns of Hartford," hence defense counsel's denomination of Mr. Beirne as "Representative Burns." State v. Bradley, at *18-20, n. 11. Broader inquiry supports the assertion, however, that this was most likely a phonetic scriveners' error, and "Mr. Burns" is appropriately identified as Mr. Beirne, and "Representative Burns of Hartford" is in fact Representative J. Agnes Burns of Hartford. State v. Bradley, at *19; Appx. A355-371.

carry with it a penalty,"[38] this is a testimony of an individual appointed by the State's executive branch specifically recognizing Connecticut's cannabis prohibition as the wholesale adoption of Anslinger's legislation.

Additionally, the Drug Enforcement Administration's own publication recounts:

> The proposed Uniform State Narcotic Law, substantially as approved by the Conference [the National Conference of Commissioners on Uniform State Law], eventually would be enacted by almost every state in the Union.
>
> The Great Depression brought with it a deep sense of peril. From the American Southwest came reports of unrest and racial tension attributed by the press to the increasing presence of marihuana, which was suddenly recognized as a "Killer Drug" in the words of a widely distributed poster. The publicity, the Bureau noted in its annual report, "tends to magnify the extent of the problem and lends color to the inference that there is an alarming spread of the improper use of the drug, whereas the actual increase in such use may not be inordinately large.
>
> ...Mr. Anslinger proposed to regulate marihuana control to an optional provision in the Uniform State Narcotic Law. In 1933, however, the annual report noted: "A disturbing development in quite a number of states is found in the apparently increasing use of marihuana by the younger element in the younger cities." Exh. A at 17, Defendant's Motion for Reconsideration, Appx. A276.

Indeed, Anslinger crafted the legislation with the intention that it be adopted by every state. "During his first year as commissioner of narcotics, Mr. Anslinger secured from the National Conference of Commissioners on Uniform Drug Laws the draft of a 'Uniform Narcotics Act,' designed for adoption by state legislatures." Exh. B at 1, Defendant's Motion for Reconsideration, Appx. A289.

> Commissioner Anslinger's report for 1935 noted: "In the absence of Federal legislation on the subject, the States and cities should rightfully assume the responsibility for providing vigorous measures for the extinction of this lethal weed, and it is therefore hoped that all public-spirited citizens will earnestly enlist in the movement urged by the Treasury Department to adjure intensified

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[38] See Appx. A367.

enforcement of marijuana laws." Exh. B at 2, Defendant's Motion for Reconsideration, Appx. 290.

Anslinger believed, "State law was either inadequate or non-existent, to impose a sentence equal to those which were imposed in Federal courts in cases of greater magnitude and where the offense was a felony." Exh. C. at 3, Defendant's Motion for Reconsideration, Appx. A303. Anslinger himself opined: "The demand for uniform state legislation on this subject was very extensive. It was argued that the traffic in narcotic drugs should have the same safeguards and the same regulation in all of the states. This act is recommended to the states for that purpose." Exh. D at 3, Defendant's Motion for Reconsideration, Appx. A311.

Certainly, at the time the Connecticut legislature criminalized cannabis completely, the stated purpose of the amendments to Connecticut's law were "to make the act uniform with the Narcotic law and the laws of the other states...the amendments are those which were necessary to make our law conform to the federal law." Exh. E, Defendant's Motion for Reconsideration, Appx. A324 .[39]

Thus, as Mr. Bradley alleged and is enumerated above, Anslinger's campaign to criminalize cannabis had a racially discriminatory purpose. Furthermore, in Anslinger's own words, the Uniform Narcotic Drug Act (the State legislation crafted by Anslinger) was designed to mirror Federal prohibition of cannabis within the individual states. Finally, as the legislative

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[39] See Defendant's Amended Memorandum of Law in Support of Defendant's Motion to Dismiss at 28-29: "In 1930, unlike cocaine, opium, morphine, heroin, and codeine, cannabis remained unregulated in Connecticut...Then in 1935, cannabis became regulated by the Uniform State Narcotic Drug Act, prohibiting its possession and dispensation with certain medical and academic exceptions...As evidenced by the corresponding legislative history, the regulation of cannabis in Connecticut was in response to the Federal activism of Harry Anslinger...By 1939, marijuana was criminalized entirely, without exception for medicinal or research purposes." Appx. A43-44 Appx. A98-99.

history demonstrates, Connecticut adopted the Uniform Narcotic Drug Act in its entirety in 1939, with the specifically stated purpose of conforming with Federal law.

Certainly, the sudden criminalization of cannabis in Connecticut has not been traced to anything other than the racist mongering of Harry Anslinger. The recognized history and benefits of cannabis were presented by the defendant to demonstrate that prior to Harry Anslinger, the first commissioner of the United States Treasury Department's Federal Bureau of Narcotics and his racially motivated campaign, cannabis was widely utilized and accepted in myriad cultures for thousands of years across the globe. Connecticut's own decriminalization and legalization of marijuana for medicinal purposes[40] merely confirms that the initial criminalization of marijuana emanated from the normalized racially discriminatory purpose of the time, as opposed to legitimate criminal justice or medicinal concerns. This is sufficient to establish a subject the statute to strict scrutiny.

> Davis[41] does not require a plaintiff to prove that the challenged action rested solely on racially discriminatory purposes. Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the "dominant" or "primary" one. In fact, it is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified. Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1975)(Identifying subjects of proper inquiry in determining whether racially discriminatory intent existed).

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[40] C.G.S. §21a-408 *et seq.*

[41] Wash. v. Davis, supra.

By way of example,

> In Guinn v. United States, 238 U.S. 347, 59 L. Ed. 1340, 35 S. Ct. 926 (1915), the Court invalidated under the Fifteenth Amendment a statute that imposed a literacy requirement on voters but contained a "grandfather clause" applicable to individuals and their lineal descendants entitled to vote "on [or prior to] January 1, 1866." Id., at 357 (internal quotation marks omitted). The determinative consideration for the Court was that the law, though ostensibly race neutral, on its face "embodied no exercise of judgment and rested upon no discernible reason" other than to circumvent the prohibitions of the Fifteenth Amendment. Id., at 363. *In other words, the statute was invalid because, on its face, it could not be explained on grounds other than race.* (Emphasis added) Shaw v. Reno, 509 U.S. 630, 644 (1993).

It is not as the court avers, that *Dr. Gettman's statistics* regarding disparate impact must be "unexplainable on grounds other than race,"[42] for Mr. Bradley to establish a prima facie case, it is that cannabis prohibition in Connecticut is unexplainable on grounds other than race, and the Federal prohibition that it was definitively modeled after was unambigously motivated by racial discrimination. Dr. Gettman's statistics merely confirm the racially discriminatory purpose of the legislation. "An invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the [classification] bears more heavily on one race than another." (Internal citations and quotations omitted) Hernandez v. New York, 500 U.S. 352, 363 (1991). See also Yick Wo v. Hopkins, 118 U.S. 356, 373-374 (1886):

> Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

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[42] State v. Bradley, at * 24.

Again, the Fourth Circuit's holding in N.C. State Conf. of the NAACP v. McCrory, supra. elucidates the erroneous analysis undertaken by the trial court in this case.

> *In large part, this error resulted from the court's consideration of each piece of evidence in a vacuum, rather than engaging in the totality of the circumstances analysis required by Arlington Heights. Any individual piece of evidence can seem innocuous when viewed alone, but gains an entirely different meaning when considered in context.*
>
> Our conclusion does not mean, and we do not suggest, that any member of the General Assembly harbored racial hatred or animosity toward any minority group. But the totality of the circumstances -- North Carolina's history of voting discrimination; the surge in African American voting; the legislature's knowledge that African Americans voting translated into support for one party; and the swift elimination of the tools African Americans had used to vote and imposition of a new barrier at the first opportunity to do so -- cumulatively and unmistakably reveal that the General Assembly used SL 2013-381 to entrench itself. It did so by targeting voters who, based on race, were unlikely to vote for the majority party. Even if done for partisan ends, that constituted racial discrimination. (Emphasis added) N.C. State Conf. of the NAACP v. McCrory, 831 F.3d 204, 233 (4th Cir. 2016).

In holding otherwise, the court subjects Mr. Bradley to a higher burden of proof than the law requires to establish a prima facie case. "The burden of establishing a prima facie case is a burden of production, not a burden of proof, and therefore involves no credibility assessment by the fact finder...The level of proof required to establish a prima facie case is minimal and need not reach the level required to support a jury verdict in the plaintiff's favor." (Internal citations and quotations omitted) Craine v. Trinity College, 259 Conn. 625, 638 (2002).

The United States Supreme Court's decision in Hunter v. Underwood, 471 U.S. 222 (1985) is instructive in this matter. At issue in Hunter was Article VIII, § 182, of the Alabama Constitution of 1901 which provided for the disenfranchisement of persons convicted of certain enumerated felonies and misdemeanors, including "any...crime involving moral turpitude." The

case was tried on a claim, *inter alia*, that the misdemeanors encompassed within § 182 were intentionally adopted to disenfranchise blacks on account of race and that their inclusion in § 182 has had the intended effect. Similar to the historical development presented in this case, the United States Supreme Court in Hunter described the legislative testimony and opinions of historians "showed that the Alabama Constitutional Convention of 1901 was part of a movement that swept the post-Reconstruction South to disenfranchise blacks...The delegates to the all-white convention were not secretive about their purpose. John B. Knox, president of the convention, stated in his opening address: 'And what is it that we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State.'" Hunter, at 229. Correspondingly, "The registrars' expert estimated that by January 1903 section 182 had disfranchised approximately ten times as many blacks as whites. This disparate effect persists today. In Jefferson and Montgomery Counties blacks are by even the most modest estimates at least 1.7 times as likely as whites to suffer disfranchisement under section 182 for the commission of nonprison offenses." Hunter, at 227. Ultimately, the United States Supreme Court concluded that § 182 was enacted with the intent of disenfranchising blacks, and consequently violated equal protection. "Without deciding whether § 182 would be valid if enacted today without any impermissible motivation, we simply observe that its original enactment was motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect. As such, it violates equal protection under *Arlington Heights*." Hunter, at 233.

Like the disenfranchisement at issue in Hunter, the Federal prohibition of marijuana was merely a targeted effort to perpetuate the prosecution and punishment of racial minorities. "Acts generally lawful may become unlawful when done to accomplish an unlawful end...and

a constitutional power cannot be used by way of condition to attain an unconstitutional result." (Internal citations and quotations omitted) Gomillion v. Lightfoot, 364 U.S. 339, 347-348 (1960)(Finding that if plaintiffs' allegations upon a trial remained uncontradicted or unqualified, the conclusion would establish for all practical purposes that the legislation was solely concerned with segregating white and colored voters by fencing black citizens out of town so as to deprive them of their pre-existing municipal vote). "Equal protection analysis turns on the intended consequences of government classifications." Hernandez v. New York, 500 U.S. 352, 362 (1991). "...proof of foreseeable consequences is one type of quite relevant evidence of racially discriminatory purpose..." Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526, 536 n. 9 (1979).

Before the trial court, Mr. Bradley established a prima facie case that race was a motivating factor in the criminalization marijuana. Although the State filed an objection to Mr. Bradley's motion, the State did not present any evidence to contradict his claim. As a result, this court should reverse the finding of the trial court and rule in favor of Mr. Bradley. Mr. Bradley has provided this Court with legislative testimony demonstrating the statute's racially discriminatory intent, and current statistics confirming the discriminatory purpose has been achieved.[43] The burden now shifts to the State to demonstrate that marijuana would have been criminalized absent the racially discriminatory purpose. "With a prima facie case made out, the burden of proof shifts to the State to rebut the presumption of unconstitutional action..." (Internal citations and quotations omitted) Wash. v. Davis, supra. at 241. See also

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[43] See Exhibit F, Defendant's Amended Memorandum of Law in Support of his Motion to Dismiss, Appx. 168-180 revealing that black people are four times more likely to be arrested in Connecticut for cannabis offenses than white people, despite white people having a higher rate of usage.

Hunter, supra. at 228: "Once racial discrimination is shown to have been a 'substantial' or 'motivating' factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor."[44] Notably, the State's proffered rationale remains subject to strict scrutiny.

"...statutes are subject to strict scrutiny under the Equal Protection Clause not just when they contain express racial classifications, but also when, though race neutral on their face, they are motivated by a racial purpose or object." Miller v. Johnson, 515 U.S. 900, 913 (1995). It is a "well-established principle that when hurt or injury is inflicted on racial minorities by the encouragement or command of laws or other state action, the Constitution requires redress by the courts." Schuette v. Coalition to Defend Affirmative Action, 134 S. Ct. 1623, 1637 (2014). "If a law is racially neutral on its face, the persons challenging the law as being a racial classification that violates equal protection must show that the law was created or maintained for a racially discriminatory purpose. The court will apply the compelling interest test to a law that is neutral on its face only if the court finds a racially discriminatory purpose." John E. Nowak & Ronald D. Rotunda, Constitutional Law, §14.4, 628 (5th ed. 1995).[45] To satisfy strict

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[44] Consequently, it is the State's burden to proffer "some other innocuous explanation" for the racial disparity borne out in Dr. Gettman's report, not the defendant's burden to "rule out the possibility." State v. Bradley, at *24-25.

[45] "If the classification does not meet the appropriate standard of review, then the legislation has failed to have a sufficient relationship to the required governmental purpose. A law which violates this concept also denies the individuals classified due process of law because the means employed by the government do not relate to a compelling to legitimate end [sic] of government. Thus, federal classifications in the area of fundamental rights or suspect classifications which do not promote a compelling governmental interest violate the due process clause." Id., at 596 citing Bolling v. Sharpe, 347 U.S. 497 (1954). "The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race. It is also true that the Due Process Clause of the Fifth Amendment

scrutiny, the State must demonstrate that its legislation "is narrowly tailored to achieve a compelling interest." Id. at 920. "A purpose to discriminate on the basis of race receives the strictest scrutiny under the Equal Protection Clause..." Vieth v. Jubelirer, 541 U.S. 267, 293 (2004). "A racially discriminatory purpose is always sufficient to subject a law to strict scrutiny, even a facially neutral law that makes no mention of race." Lawrence v. Texas, 539 U.S. 558, 600 (2003)(Scalia, J. dissenting). "It is well established that when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny...racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification." (Internal citations and quotations omitted) Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 720 (2001). "In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests." Adarand Constructors v. Pena, 515 U.S. 200, 227 (1995).[46]

Here, the State will be unable to rebut the presumption as Connecticut has legalized marijuana for medicinal use[47] and decriminalized the possession of less than one half ounce

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contains an equal protection component prohibiting the United States from invidiously discriminating between individuals or groups." Wash. v. Davis, 426 U.S. 229, 239 (1976).

[46] "This standard of review...is not dependent on the race of those burdened or benefited by a particular classification...Thus, any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest of judicial scrutiny." (Internal citations and quotations omitted) Gratz v. Bollinger, 539 U.S. 244, 270 (2003).

[47] C.G.S. §21a-408 *et seq.*

of marijuana.[48] In recognizing the medicinal value of marijuana, Connecticut law is in direct conflict with Federal law- the Controlled Substances Act ("CSA"). "The CSA designates marijuana as contraband for any purpose; in fact, **by characterizing marijuana as a Schedule I drug, Congress expressly found that the drug has no acceptable medical uses**." (Emphasis added) Gonzales v. Raich, 545 U.S. 1, 27 (2005). With respect to decriminalization, " Following the enactment of P.A. 11-71, possession of less than one-half ounce of marijuana now holds the same legal status as such minor civil violations as maintaining state records using unapproved paper, ink, or loose-leaf binders...This is not the sort of conduct to which society attaches substantial moral opprobrium..." State v. Menditto, 315 Conn. 861, 874-875 (2015). Pursuant to C.G.S. §51-164n(e), a summons for the possession of a decriminalized amount of marijuana "shall not be deemed to be an arrest and the commission of an infraction or of any such violation shall not be deemed to be an offense within the meaning of section 53a-24." Consequently, any criminal justice concerns are insufficient to satisfy a compelling state interest in the prosecution of Mr. Bradley.

Additionally, the newly elected Governor of Connecticut, Ned Lamont, has consistently expressed that legalizing the recreational use of cannabis is a legislative priority.[49] Cannabis has been already been legalized in Alaska, California, the Commonwealth of the Northern Mariana Islands, Colorado, the District of Columbia, Maine, Massachusetts, Michigan, Nevada,

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[48] C.G.S. §21a-279a.

[49] Ebon Udoma, Legalizing Marijuana a Legislative Priority, Says Lamont, Nov. 21, 2018 *available at* http://www.wshu.org/post/legalizing-marijuana-legislative-priority-says-lamont#stream/0

Oregon, Vermont, and Washington.[50] In addition to Connecticut, Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Guam, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, West Virginia, and Wyoming[51] have legalized marijuana for medicinal use. In addition to Connecticut, Delaware, Illinois, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New York, North Carolina, Ohio, and Rhode Island have decriminalized the possession of certain amounts of marijuana.[52]

With the increasing "re-legalization" and decriminalization by numerous states, including Connecticut, it is difficult to conceive of a legitimate legislative purpose to prohibit cannabis, one that furthers a compelling state interest. The only remaining purpose is discriminatory: which is borne out in its current enforcement which has disparately created a population of minorities with criminal records at a rate three times greater than that of white people.[53] The same racially discriminatory purpose that precipitated the criminalization of cannabis continues

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[50] See http://norml.org/legal/legalization

[51] See http://norml.org/legal/medical-marijuana-2

[52] See http://norml.org/aboutmarijuana/item/states-that-have-decriminalized

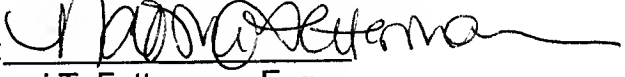
[53] Notably, although a powerful and vocal minority of public officials have continued their irrational opposition to rescheduling or de-scheduling of Cannabis, the overwhelming majority of Americans desire a change. According to an April 20, 2017 Quinnipiac Poll, nearly 94% of Americans support legalization of medical marijuana and 60% of Americans support full legalization and decriminalization of Cannabis for all purposes. See Jennifer Calfas, More Americans Than Ever Want Marijuana Legalized, Fortune, Apr. 20, 2017, *available at* http://fortune.com/2017/04/20/legalize-marijuana-united-states-quinnipiac-poll/

to pervade the enforcement of the statute, cementing the violation of the Equal Protection clause and demanding the invalidation of the statute.

III. CONCLUSION

WHEREFORE, for all the afore-stated reasons, the Defendant-Appellant, Mr. William Bradley, respectfully requests that this Court reverse the trial court's decision denying his Motions to Dismiss, order the charges dismissed, his convictions and corresponding sentences vacated, and all other relief this Court deems to be equitable and just.

Respectfully submitted,
WILLIAM HYDE BRADLEY

By: 

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CERTIFICATION

Pursuant to Conn. Prac. Bk. § 67-2 and §67-3, the undersigned certifies that the brief of the defendant-appellant with the attached appendix in the above captioned case complies with all format provisions and further certifies that a copy of said documents was sent via first class mail this 4th day of January 2019 to: Hon. Maureen M. Keegan, J.D. & G.A. 9 Courthouse, 1 Court Street, Middletown , CT 06457 and Ms. Susan Marks, Esq., Supervisory Assistant State's Attorney, Juris No. 401795, Office of Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, Tel. (860) 258-5807, Fax (860) 258-2828 in accordance with Conn. Prac. Bk. § 62-7. In addition, the attached was delivered via First Class mail to the Defendant-Appellant, Mr. William Hyde Bradley.

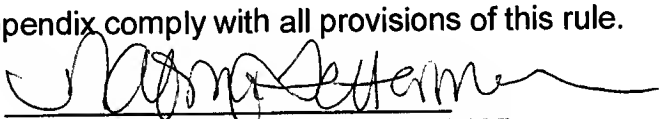
The undersigned attorney further certifies pursuant to Connecticut Rule of Appellate Procedure §67-2, that:

(1) the electronically submitted brief and separately bound appendix have been delivered electronically to the last known email address of each counsel of record for whom an e-mail address has been provided; and

(2) the electronically submitted brief and separately bound appendix and filed paper brief and separately bound appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and

(3) the brief and separately bound appendix being filed with the appellate clerk are true copies of the brief and separately bound appendix that were submitted electronically; and

(4) the brief and separately bound appendix comply with all provisions of this rule.



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